

of the materials submitted in support of the request for rulings. It is subject to verification on examination.

FACTS

Taxpayer is a domestic corporation owned directly by Owner 1, Owner 2, Owner 3 and Owner 4 (the "Owners"). Owner 1 is a sole proprietorship and the remaining Owners are treated as partnerships for federal income tax purposes. The Owners are in turn owned directly, or indirectly through entities treated as partnerships for federal income tax purposes, by Trust, Individual 1, Individual 2, and Individual 3. The Trust is a revocable trust of Individual 4 and Individual 5, who are also its trustees.¹ Taxpayer was formed on Date 1 for the sole purpose of qualifying and operating as an interest charge domestic international sales corporation ("IC-DISC"). Taxpayer operates under a commission arrangement with the Owners.

In Year 1, Accounting Firm advised Individual 4 of the benefits associated with operating an IC-DISC. Subsequent to providing that advice, Law Firm assisted in filing Articles of Incorporation for Taxpayer. Due to a miscommunication, Accounting Firm believed that Law Firm would file Form 4876-A on Taxpayer's behalf. However, Law Firm believed that Accounting Firm would file Form 4876-A. As a result, a Form 4876-A for Taxpayer was not filed.

Believing all the requirements to conduct business and be treated as an IC-DISC for its first taxable year were satisfied, Taxpayer began operating as an IC-DISC on Date 1. In Year 2, Accounting Firm prepared to file Taxpayer's first federal income tax return using Form 1120-IC-DISC. Approximately one week prior to filing the Form 1120-IC-DISC, Accounting Firm discovered that a Form 4876-A had never been filed. Prior to receiving any notice from the Service that Taxpayer failed to timely elect to be treated as an IC-DISC, Accounting Firm mailed a completed Form 4876-A to the Service on Date 2. In order to operate as an IC-DISC beginning on Date 1, Taxpayer requests a ruling granting an extension of time to file Form 4876-A for its first taxable year.

LAW AND ANALYSIS

Section 992(b)(1)(A) of the Internal Revenue Code (the "Code") provides that an election by a corporation to be treated as a DISC² shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

¹ Taxpayer and Owners are owned or controlled directly or indirectly by the same interests within the meaning of Treas. Reg. § 1.482-1.

² As used in this letter, the terms "IC-DISC" and "DISC" have the same meaning.

Section 992(b)(1)(B) of the Code provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Temporary Treasury Regulation § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A and that a corporation electing to be treated as an IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year.

Treasury Regulation § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treasury Regulation § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treasury Regulation § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

Based on the facts and representations submitted with Taxpayer's ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A. Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). Taxpayer should attach a copy of this ruling letter to its Federal income tax return for the taxable years to which this letter applies.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Except as expressly provided

herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Pursuant to a Power of Attorney on file in this office, copies of this ruling letter are being furnished to your authorized representatives.

Sincerely,

Joseph Dewald
Senior Technical Reviewer, Branch 6
Office of Associate Chief Counsel (International)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: